P. G. Simon, Inc. *and* **Roy M. Pitman** *and* **Millard D. Marcum.** Cases 25-CA-13260-1 and 25-CA-13260-2

February 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Upon charges filed on March 5, 1981, by Roy M. Pitman and Millard D. Marcum, herein called the Charging Parties, and duly served on P. G. Simon, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 25, issued a consolidated complaint on April 17, 1981, against Respondent, alleging that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and consolidated complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the consolidated complaint.

On October 5, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer to the consolidated complaint. Subsequently, on October 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The consolidated complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the consolidated complaint is filed within 10 days of service thereof "all of the allegations in the consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the consolidated complaint and notice of hearing on April 17, 1981; it filed no answer by September 23, 1981, and, on that date, it was informed by telephone by the General Counsel of the necessity of filing an answer; and, by letter of September 23, 1981, it was given until September 29, 1981, by the General Counsel to file an answer. If no answer were filed by that date, the General Counsel indicated, he would seek summary judgment. As noted above, Respondent thereafter failed to file an answer or a response to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the consolidated complaint are deemed admitted and are found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a Michigan corporation with its principal office and place of business in Detroit, Michigan. Respondent has been engaged as a painting contractor at various locations throughout the United States, including a site located in Muncie, Indiana. In the 12 months preceding issuance of the consolidated complaint, Respondent, in the course and conduct of its business operations, purchased and received goods and materials at the Muncie site valued in excess of $50,000 directly from points outside the State of Indiana. It further performed services valued in excess of $50,000 in this time period in States other than the State of Indiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Painters District Council No. 22, International Brotherhood of Painters and Allied Trades, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On an unknown date in December 1980, and on February 12 and March 2, 1981, Respondent's employees Roy M. Pitman and Millard D. Marcum concertedly complained directly to Respondent, and through the Union to Respondent, regarding the wages, hours, and working conditions of Respondent's employees. On or about March 2, 1981, Respondent discharged its employees Pitman and Marcum and since that date has failed and refused to reinstate them because of their activities in December 1980, and in February and March 1981, described above; because they joined, supported, or assisted the Union; because they engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection; because Respondent believed they had engaged in such activities; and in order to discourage employees from engaging in such activities or other concerted activities.

Accordingly, we find that, by the aforesaid conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act and that, by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Further, by such conduct, Respondent has discriminated in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

We shall order that Respondent offer Roy M. Pitman and Millard D. Marcum immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We shall also order that Respondent make Roy M. Pitman and Millard D. Marcum whole for any loss of pay they may have suffered because of their unlawful discharges, with backpay to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), and with interest to be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. P. G. Simon, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging and refusing to reinstate employees Roy M. Pitman and Millard D. Marcum because they engaged in protected concerted and union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, P. G. Simon, Inc., Muncie, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging and refusing to reinstate employees because they choose to engage in protected concerted or union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Roy M. Pitman and Millard D. Marcum immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by paying them a sum of money to be determined in accordance with the formula set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and compute the amount of backpay due under the terms of this Order.

(c) Post at its Muncie, Indiana, facility copies of the attached notice marked "Appendix."[1] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge and refuse to reinstate any employees because they engage in protected concerted or union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL offer Roy M. Pitman and Millard D. Marcum immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered by reason of the discrimination against them, plus interest.

P. G. SIMON, INC.

[1] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."